

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN SCOTT OSBORN,

Defendant.

Case No. 1:04-CR-169

HON. RICHARD ALAN ENSLEN

ORDER

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This matter is before the Court on Plaintiff's Motion to Strike Statutory Citation. Plaintiff requests the Court to strike the statutory citation "18 U.S.C. § 924(c)(1)(B)(i)," which was included in the Information as a result of a clerical error. Upon review, the Court finds it proper to strike the incorrect statutory citation because doing so would neither prejudice or mislead Defendant. Furthermore, the correction would not deprive Defendant of adequate notice because the correct statutory citation, 18 U.S.C. § 924(c)(1)(A)(i), is already included in the Information. *See, e.g., United States v. Lake*, 985 F.2d 265, 271 (6th Cir. 1993); *France v. Humphreys*, 940 F.2d 659, **1 (6th Cir. 1991) (unpublished) ("An obvious typographical error in an indictment may be corrected upon motion to the court." (citing *United States v. Bush*, 659 F.2d 163, 167 (D.C. Cir. 1981))). Additionally, Defendant has indicated that he has no objection to and joins in Plaintiff's Motion to Strike. (Def.'s Resp. at 1.)

Moreover, denial of Plaintiff's Motion would unfairly prejudice Defendant by exposing him to a ten-year statutory minimum sentence, as opposed to a five-year statutory minimum sentence, simply because of a clerical error. *See, e.g., United States v. Neill*, 166 F.3d 943, 947-48 (9th Cir. 1999). For those reasons, the Court finds that it is proper to correct the clerical error.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff United States of America's Motion to Strike Statutory Citation (Dkt. No. 35) is **GRANTED**.

IT IS FURTHER ORDERED that the statutory citation "**18 U.S.C. § 924(c)(1)(B)(i)**" is **STRICKEN** from Count One of the Information (Dkt. No. 30).

DATED in Kalamazoo, MI:
June 9, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE